

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JOHN MELVIN DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	Case Number CIV-06-1376-C
)	
UNITED STATES OF AMERICA;)	
OKLAHOMA COUNTY SHERIFF,)	
GUARDS and DEPUTIES; and)	
UNKNOWN U.S. MARSHALS,)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Report and Recommendation (“R&R”) entered by Magistrate Judge Valerie K. Couch on March 8, 2007. Therein, Judge Couch recommended dismissal of Plaintiff’s Complaint for failure to state a claim for relief pursuant to 28 U.S.C. § 1915A(b)(1) and that the dismissal count as a strike pursuant to 28 U.S.C. § 1915(g). Judge Couch noted that despite raising a variety of claims Plaintiff had failed to raise a single issue that stated a claim for relief. Indeed, all of Plaintiff’s claims are either barred by clear and well established law, or seek relief that is unavailable from a court of law.

In the R&R, Plaintiff was notified that any objection to the R&R had to be filed by March 28, 2007. Rather than file an objection, Plaintiff, within the time limit, filed a “Motion to Withdraw Civil Action.” The Court denies Plaintiff’s motion. As noted, the law

* Plaintiff filed a request to extend the time to object but then filed his request to withdraw. The Court finds the request to withdraw moots the request for additional time.

is clear on the futility of Plaintiff's claims. Thus, with even limited research Plaintiff could have learned the inadequacy of his claims. To allow Plaintiff to withdraw would permit him to avoid receiving a strike, would encourage such frivolous filings in the future and would result in future needless expenditures of judicial resources. Consequently, the Court denies Plaintiff's request. Further, Plaintiff's claims cannot be cured by amendment; therefore, the dismissal in this case will be with prejudice. To permit Plaintiff to withdraw would allow him to avoid the preclusive effect of a dismissal with prejudice and again permit additional waste of judicial resources.

The Court adopts in full the thorough and well reasoned R&R entered by Judge Couch and DISMISSES this action with prejudice. Upon final appellate review, this matter shall count as a strike pursuant to 28 U.S.C. § 1915(g). Plaintiff's Motion to Withdraw Civil Action (Dkt. No. 28) is DENIED. All other pending motions are also DENIED.

IT IS SO ORDERED this 29th day of March, 2007.



ROBIN J. CAUTHRON
United States District Judge